



Commonwealth  
of Massachusetts

## *OCPF Online*

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*Office of Campaign and Political Finance  
One Ashburton Place, Room 411  
Boston, MA 02108*

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### Advisory Opinion

February 25, 2002  
AO-02-09

Governor's Councilor Edward M. O'Brien  
O'Brien Election Committee  
P.O. Box 507  
Easthampton, MA 01027

Re: Electronic filing and clean election law

Dear Councilor O'Brien:

This letter is in response to your request for an advisory opinion received on January 17, 2002.

You have asked a number of questions concerning the application of electronic filing requirements to candidates for the office of Governor's Councilor. You are currently a member of the Governor's Council. You have stated that you do not own a computer nor do you have access to a computer with an Internet connection.

Your questions can be answered by reference to section 18C of M.G.L. c. 55, the campaign finance law, which requires certain candidates and candidate's committees to file campaign finance reports and financial activity statements electronically by modem or via computer terminals provided or approved by the director of the Office of Campaign and Political Finance (OCPF).

#### QUESTIONS

- (1) What is the effect of M.G.L. c.55, s. 18C on candidates for the office of Governor's Councilor?

ANSWER: M.G.L. c.55, s. 18C requires Governor's Council candidates to commence electronic filing on January 1, 2002. Governor's Council candidates must file electronically if, during the two-year election cycle<sup>1</sup>, their receipts or expenditures exceed a statutory threshold, which is indexed biennially. The requirement to file electronically commences, however, from the start of the period and not when the threshold is exceeded. Currently, Governor's Council

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<sup>1</sup> The "election cycle" is "the period beginning on the thirty-first day following a regular state election for that office and ending on the thirtieth day following the next state election for that office, inclusive." M.G.L. c.55A, s. 1. For the current election cycle, i.e., the cycle that ends on the thirtieth day following the state election in 2002, however, the election cycle began on March 31, 2001. See Section 325, Chapter 159 of the Acts of 2000.

candidates must file electronically if they anticipate raising or spending more than \$4,330 during the 2002 election cycle. If you reasonably expect that you will not raise or spend more than \$4,330 between March 31, 2001 and December 7, 2002, you do not need to file electronically. The campaign finance law imposes fines for any report that is not filed on time with OCPF. The fine, which is \$10 per day up to a maximum of \$2,500 per report, applies to electronic as well as paper reports. Any party required to file electronically who fails to file, files late, files a false return, or allows a false return to be filed, may be subject to the same penalties as if they failed to file or filed late a paper filing required under M.G.L. Chapter 55, Section 18 or filed a false return or allowed a false return to be filed.

- (2) Does M.G.L. c. 55, s. 18C only apply to participants in the Clean Elections system?

ANSWER: No. The electronic filing requirement set forth in M.G.L. c. 55, s.18C applies equally to all candidates and their committee for the offices named in section 18C regardless of whether those candidates choose to participate in the Clean Elections system.

- (3) Are a candidate's loans to his or her committee included in the calculation of the electronic filing threshold amount?

ANSWER: Yes. A candidate's loans to his or her committee are considered contributions to the committee. Therefore, the loans would be included in the calculation of the amount that the candidate "raised or spent" during the election cycle for the purpose of determining whether the candidate is required to file electronically.

## DISCUSSION

Electronic filing is required by M.G.L. c. 55, § 18C, which was approved by the voters at the 1998 state election and enacted as c. 395 of the Acts of 1998. The change was part of the Clean Elections ballot question, but is in a separate chapter of the law that deals with financial disclosure.

Section 18C requires electronic filing by certain political committees and by candidates who exceed statutory fundraising or spending thresholds, which vary by the office sought and are set forth in Section 6 of Chapter 55A, the Clean Elections Law. For example, a candidate for governor must file electronically if he or she expects to raise or spend more than \$324,420 during the 2002 election cycle<sup>2</sup>. See the table on page 4 for further information regarding the electronic filing threshold amounts established by M.G.L. c. 55, s. 18C for candidates and committees.

Section 18C provides for staggered commencement dates for required electronic filing over a three-year period. Statewide, Governor's Council and legislative candidates as well as state ballot question committees who exceed the threshold are required to commence electronic filing in January 2002. Political action committees, people's committees, and political party committees who exceed the threshold are required to commence electronic filing in January 2004. After January 2005, the

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<sup>2</sup> M.G.L. c.55, s. 18C requires candidates and candidates' committees to file electronically if, "during an election cycle, [they] have "raised or spent more than 10% of the applicable expenditure **limit** set forth in section 6 of chapter 55A" (emphasis added). See M.G.L. c. 55, s. 18C(b)(1). M.G.L. c. 55A, s. 6, however, sets out two dollar amounts: in s. 6(a) for the primary election period and in s. 6(b) for the general election period. For the purposes of determining the electronic filing threshold set out in c.55, s. 18C, the expenditure limits for the primary and general election period are combined. Therefore, for 2002, that amount is \$3,244,200.00.

director of OCPF has the discretion to require electronic filing by any class of candidates, individuals or political committees required to make paper filings as required by chapter 55.

While Section 18C was part of the ballot initiative that included the Clean Elections Law, the requirement to file electronically is not dependent upon participation in the Clean Elections system. The requirement to file electronically applies equally to all of the candidates and committees named in Section 18C, regardless of whether those candidates choose to participate in the Clean Elections system. Section 18C is related to c. 55, ss. 18 and 19, which set forth the requirements for the contents and dates for filing campaign finance disclosure reports and financial activity statements that are required to be filed by all classes of candidates and committees with the director.

The calculation of the electronic filing threshold for candidates is based upon the expenditure limits set forth in M.G.L. c. 55A, s. 6. This reference to the Clean Elections Law is only in the context of the calculation for the electronic filing threshold amount. The use of the Clean Elections system expenditure limits to set a threshold does not mean that only Clean Election participants must file electronically.

The amount raised or spent during an election cycle includes all contributions received and expenditures made by a candidate. Loans from the candidate to his or her committee would be included in this calculation because M.G.L. c.55, s.1 defines a contribution as:

a contribution of money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate, or political committee, for the purpose of influencing the nomination or election of said individual or candidate, ...and shall include any: (1) gift, subscription, **loan**, advance, deposit of money, or thing of value....[emphasis added.]

Therefore, a candidate's loan to his or her campaign committee for the purpose of influencing his or her nomination or election is considered a contribution to his or her campaign. Thus, the amount loaned would be included in the calculation of the amount that the candidate "raised or spent" during the election cycle for the purpose of determining whether the candidate is required to file electronically. Again, participation in the Clean Election system is not used to determine whether a candidate is required to file electronically with OCPF.

This opinion is issued within the context of the Massachusetts campaign finance law and is based on the facts contained in your letter and conversation with OCPF staff.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

ELECTRONIC FILING REQUIREMENTS INDEXED FOR 2002 <sup>+</sup>			
Candidates Candidate's Committees Other Committees	Threshold Amount (raised or spent) <sup>+</sup>	Time Period for Calculation	Commencement Date
Governor	\$ 324,420.00 *	During an election cycle	January 1, 2002
Lieutenant Governor	\$ 81,110.00 *	During an election cycle	January 1, 2002
State Secretary	\$ 27,040.00 *	During an election cycle	January 1, 2002
Attorney General	\$ 81,110.00 *	During an election cycle	January 1, 2002
State Treasurer	\$ 81,110.00 *	During an election cycle	January 1, 2002
State Auditor	\$ 27,040.00 *	During an election cycle	January 1, 2002
Governor's Councilor	\$ 4,330.00 *	During an election cycle	January 1, 2002
State Senator	\$ 9,740.00 *	During an election cycle	January 1, 2002
State Representative	\$ 3,240.00 *	During an election cycle	January 1, 2002
State Ballot Question Committees	\$ 25,000.00 **	Since December 31st following the last state election	January 1, 2002
Political Action Committees People's Committees and Political Party Committees	\$ 10,000.00 ***	Since December 31st following the last state election	January 1, 2004
* The calculation of the electronic filing threshold amount for these candidates and candidate's committees is set forth in M.G.L. c. 55, s. 18C(b)(1). The electronic filing threshold is 10% of the applicable expenditure limit set forth in M.G.L. c. 55A, s. 6.			
** The electronic filing threshold amount for these committees is set forth in M.G.L. c.55, s. 18C(b)(2).			
*** The electronic filing threshold amount for these committees is set forth in M.G.L. c.55, s. 18C(b)(3).			
<sup>+</sup> The threshold amounts listed are for the 2002 election cycle. M.G.L. c. 55A, s. 13 required that the dollar amounts in M.G.L. c. 55A, s. 6 be indexed biannually. The next indexing will occur by February 1, 2003.			
After January 1, 2005, the director shall have the discretion to require electronic filing by any class of candidates, individuals, or political committees required to make paper filings as required by chapter 55.			